

APPEAL NO. 031797
FILED AUGUST 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 18, 2003. The hearing officer determined that the appellant's (claimant) compensable injury sustained on _____, does not extend to or include the conditions of depression, post-traumatic stress disorder (PTSD), or fibromyalgia. The claimant appealed, asserting that the medical evidence shows that her preexisting conditions of depression and PTSD were exacerbated by the compensable injury. She further asserts that she was diagnosed with fibromyalgia after the injury, and that that condition is part of the compensable injury. The claimant attaches several documents to her appeal, many of which were included in the evidence at the CCH, but some of which were not in evidence. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

Attached to the claimant's appeal were documents not offered into evidence at the CCH. Generally, the Appeals Panel does not consider evidence not offered into evidence at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with those documents attached to the appeal that were neither offered nor admitted into evidence at the hearing. We will not consider them.

The claimant was employed as a nurse in a correctional facility. She sustained a compensable injury on _____, when she slipped and fell on a wet concrete floor, injuring her neck, head, left shoulder, left hip, low back, and entire left side. The claimant testified that while she was lying on the floor (approximately five minutes) after the fall, some inmates made ugly remarks to her, which resulted in the PTSD and depression. She acknowledged that she had PTSD and depression prior to the date of injury. She asserts that the fibromyalgia did not appear until after the injury, and is therefore included in the compensable injury. The claimant is essentially disputing the way that the hearing officer evaluated and gave weight to the evidence. While the claimant contends that the evidence established that the compensable injury extends to the named conditions, the hearing officer found otherwise. He did not find that there was a causal relation between the incident on _____, and the named conditions.

The hearing officer did not err in reaching the complained-of determination. The issue of extent of injury involved a question of fact for the hearing officer to resolve. The evidence before the hearing officer was conflicting. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
THE STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge